

# CITY OF NEW ORLEANS

CITY CIVIL SERVICE COMMISSION

DEPARTMENT OF CITY CIVIL SERVICE  
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Wednesday, August 19, 2015

Mr. Eric Hessler  
PANO 2802 Tulane Avenue #101  
New Orleans, LA 70119

Re: **William Torres VS.  
Department of Police  
Docket Number: 7964**

Dear Mr. Hessler:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 8/19/2015 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,



Doddie K. Smith  
Chief, Management Services Division

cc: Michael S. Harrison  
Victor Papai  
Jay Ginsberg  
William Torres

file

WILLIAM TORRES

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7964

Appellant is a Police Officer with permanent status. The Appellant received a ten-day suspension for violation of the Appointing Authority's regulations concerning Professionalism. As reflected in the disciplinary letter: "This investigation determined that on March 28, 2010, while attending a fundraiser event you spat on Officer Athena Monteleone."

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held over two days, April 12 and June 28, 2012. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The testimony was thus:

OFFICER ATHENA MONTELEONE:

Ofc. Monteleone testified that on March 28, 2010, she attended a fundraiser with a fellow officer, Paige Brouillette. She testified that as she and Ofc. Brouillette entered the fundraiser they began walking toward a doorway that led outside. That fundraiser was for an injured police officer. As she got to the door she saw Officer Torres standing to the left of the doorway. Ofc. Monteleone testified that as she and Ofc. Brouillette proceeded through the doorway Ofc. Torres took a deep breath, inflating his chest a bit, and as she stepped through the door, he intentionally spat onto her exposed left foot. She testified that as she continued outside she asked Ofc. Brouillette if she had seen what happened and Ofc. Brouillette responded in the affirmative. Ofc. Monteleone spotted Lt. Cambiotti standing in the yard and walked toward him. She then told

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him what had just occurred.

Ofc. Monteleone testified that she and Ofc. Torres had been friends. They attended squad school together, were in the 1st district together for Hurricane Katrina and were even partners at some point. Their friendship became strained when he began dating someone that Ofc. Monteleone had previously dated. Ofc. Torres had a complaint previously sustained against him for harassment of Ofc. Monteleone.

Ofc. Monteleone testified that after the spitting incident Ofc. Torres continued to harass her, including posting things on Facebook that prompted Ofc. Monteleone to file a complaint against him with PIB. Ofc. Monteleone stated she did not want to file a complaint initially, however, the harassment continued for a few months. After making the complaint, Ofc. Monteleone and Ofc. Torres each signed a letter promising that Ofc. Torres would stay away from Ofc. Monteleone.

OFFICER PAIGE BROUILLETTE:

Ofc. Brouillette testified that on March 28, 2010, she attended a fundraiser with Ofc. Monteleone. She testified that when she and Ofc. Monteleone arrived they proceeded toward the courtyard. She saw Ofc. Torres and other task force members standing in a group to her left. Ofc. Monteleone was walking on Ofc. Brouillette's right. Ofc. Brouillette testified that as they walked toward the courtyard, she saw Ofc. Torres spit; she did not see where it landed. She testified that she and Ofc. Monteleone walked outside, Ofc. Monteleone was very upset and told her that Ofc. Torres had spit on her.

SERGEANT ANDRE LEBLANC: PIB

Sgt. LeBlanc was the investigator for this incident. He found Ofc. Torres to be in violation of Rule 3, professional conduct, paragraph 1 professionalism. Sgt. LeBlanc testified

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that although there was no reason for him to disbelieve Ofc. Torres' statement that the spitting onto Ofc. Monteleone's foot was not intentional; other information led him to sustain a violation of professionalism.

Sgt. LeBlanc testified the two had a history. Ofc. Torres was sustained on another complaint filed by Ofc. Monteleone and he believed, based on information given to him by Ofc. Monteleone, that Ofc. Torres had animosity toward her.

During his investigation, Sgt. LeBlanc took statements from three of Ofc. Monteleone's supervisors, who confirmed that Ofc. Monteleone reported the incident at the fundraiser, but differed on whether she reported the spit actually hitting her shoe. Sgt. LeBlanc testified that none of Ofc. Monteleone's supervisors had seen the incident. He testified that he made credibility calls, and a decision based on his interpretation of the evidence; namely that Ofc. Monteleone reported the incident to three of her supervisors and was taking the incident very seriously when others might not have been.

DEPUTY SUPERINTENDENT DARRYL ALBERT: FIELD OPERATIONS BUREAU

Chief Albert testified that he was present in the Bureau Chief's Hearing with Ofc. Torres and Ofc. Monteleone. He reviewed the case file, conducted testimonial hearings based on the investigation conducted by Sgt. LeBlanc and rendered a recommendation to the superintendent sustaining Rule 3, professionalism and, out of a penalty range of 3-30 days, 10 days suspended. Although he stated that no one could confirm that the saliva landed on Ofc. Monteleone, there was an ongoing feud between the two officers and that the act of spitting in the direction of Ofc. Monteleone was a way of Ofc. Torres letting her know he despised her. While this occurred off duty, it happened at a fundraiser for an injured police officer and still had an impact on the Department's ability to function. Chief Albert described such personal animosity as like a

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“cancer” that spreads through the working environment and forces officers to take sides rather than to focus on their work. He wanted to send a message that officers need to set aside personal feelings so they can work together. Chief Albert testified that his decision was based on the act of Ofc. Torres spitting, not on whether the saliva actually landed on her.

OFFICER WILL TORRES:

Officer Torres testified that he attended the 3/28/10 fundraiser. He testified that at the time he had a bad sinus problem that produced a lot of phlegm, and stated “I put my head down and I expelled some of the phlegm on the floor.” When he looked up Ofc. Monteleone and Ofc. Brouillette exited the bar area into the patio. They did not look in his direction and he did not have any further interaction with them at all. The women continued to walk past him in the direction of Lt. Cambiotti. Ofc. Monteleone spoke with Lt. Cambiotti for about a minute, two minutes at most. He denied that he intentionally spit in her direction.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. Const. Art. X, sect. 8(A); Walters v. Department of Police of New Orleans, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city civil service commission. The burden of proof on appeal, as to the factual basis for the disciplinary action is on the appointing authority. Id.; Goins v. Department of Police, 570 So 2d 93 (La. App. 4th Cir. 1990).

The civil service commission has a duty to decide independently from the facts presented whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. Walters, v.

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Department of Police of New Orleans, *supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. Cittadino v. Department of Police, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

#### ANALYSIS

The basis for the discipline imposed as set forth in the disciplinary letter was that the Appellant allegedly “spat on Officer Athena Monteleone” on March 28, 2010. The Appointing Authority proved this fact by a preponderance of the evidence. Ofc. Monteleone’s testimony to that effect was corroborated by the prior consistent statement that she made immediately afterwards to Ofc. Brouillette. Further, the Appointing Authority established Ofc. Torres’ motive in engaging in this unprofessional conduct by establishing a prior complaint sustained against Ofc. Torres for conduct against Ofc. Monteleone.

Statements given by Ofc. Monteleone’s immediate supervisors who were present at the fundraising event confirmed that Ofc. Monteleone immediately reported the incident at the scene. The statements from these supervisors, however, also questioned whether Monteleone stated that she had been spit at, or on. The fact of whether the spit actually hit Ofc. Monteleone’s foot is not particularly relevant to the determination of Ofc. Torres’ professionalism, nor was it deemed relevant to Chief Albert’s decision to suspend him. Regardless, none of these supervisors appeared at the hearing, thus the hearsay accounts of their statements are less reliable

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than Ofc. Brouillette's testimony confirming Ofc. Monteleone's claim that the spit did hit her foot.

The appointing authority also has the burden of proving by a preponderance of the evidence both the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. Cure v. Dept. of Police, 07-0166, p. 2 (La.App. 4 Cir. 8/1/07), 964 So.2d 1093, 1094, citing Marziale v. Dept. of Police, 06-0459, p. 10 (La.App. 4 Cir. 11/8/06), 944 So.2d 760, 767. The appointing authority must prove that the actions complained of bear a real and substantial relationship to the efficient operation of the public service. Cittadino (supra).

Here, the appointing authority established the need for police officers to behave professionally towards each other, and to avoid harassing conduct against each other, even off-duty. Preserving professionalism in the Department is important to avoid distracting and dividing both the officers involved and others around them. That is particularly true here when Ofc. Torres had been warned. It is undisputed that Ofc. Torres had previously had a complaint sustained against him for unprofessional conduct against Ofc. Monteleone and that this was thus an ongoing problem. Continuing to act in an unprofessional way to Ofc. Monteleone, even off-duty at a police fundraiser, could have a clear impact on the efficiency of public service. As Chief Albert described it, police officers have to work together to do their job, a necessity clearly hampered by unprofessional interactions after their shifts are done.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 19<sup>th</sup> DAY OF AUGUST, 2015.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

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TANIA TETLOW, COMMISSIONER

CONCUR:

  
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MICHELLE D. CRAIG, CHAIRMAN

  
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JOSEPH S. CLARK, COMMISSIONER